

EXHIBIT L

Court Transcript, September 19, 2013

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: Chapter 11
Case No. 10-11963 (CGM)
SAINT VINCENT'S CATHOLIC (Jointly Administered)
MEDICAL CENTERS OF NEW YORK,
d/b/a SAINT VINCENT CATHOLIC
MEDICAL CENTERS, et al, New York, New York
Thursday, September 19, 2013
11:11 a.m.
Debtors.
.....

TRANSCRIPT OF AGREED SCHEDULING ORDER FOR DISCOVERY AND MOTION
PRACTICE REGARDING THE LIQUIDATING TRUSTEE'S OBJECTIONS TO
PROOFS OF CLAIM NO. 4041 TO 4049 AND NO. 4780
FIFTY-FOURTH OMNIBUS OBJECTION OF THE LIQUIDATING TRUSTEE TO
CERTAIN CLAIMS (TIER I - (A) IMPROPERLY CLASSIFIED CLAIMS; (B)
CLAIM AMOUNTS THAT ARE INCONSISTENT WITH THE DEBTORS' BOOKS AND
RECORDS; (C) CLAIMS THAT LACK SUFFICIENT DOCUMENTATION)
HEARING TO CONSIDER THE ORDER ENFORCING THE PLAN INJUNCTION
SIGNED ON 8/19/2013
MOTION FOR STAY PENDING APPEAL/MOTION FOR STAYED PROCEEDINGS
PENDING APPEAL
REQUEST FOR RECONSIDERATION REGARDING THE ORDER ENFORCING THE
PLAN INJUNCTION
OMNIBUS OPPOSITION REPLY TO SANCTIONS ASSESSED ON SHERYL R.
MENKES AND STAY PENDING APPEAL
BEFORE THE HONORABLE CECELIA G. MORRIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 11:11 a.m.)

2 (Call to order of the Court.)

3 THE COURT: Good morning.

4 COUNSEL: Good morning. Good morning.

5 THE COURT: You may be seated.

6 This is Case No. 10-11936 [sic], in the matter of
7 Saint Vincents Catholic Medical Centers of New York.

8 Your name and affiliation, please.

9 MS. SCHULTZ: Good morning, Your Honor. Sarah
10 Schultz, Akin, Gump, Strauss, Hauer & Feld, on behalf of the
11 liquidating trust.

12 THE COURT: Very good.

13 MR. SMITH: Good morning, Your Honor. David Smith,
14 Togut, Segal & Segal, also counsel to the liquidating trust.

15 MR. OSWALD: Good morning, Your Honor. Frank Oswald,
16 also from Togut Segal, on the second matter regarding --

17 THE COURT: Okay. I'll let you address it when we get
18 to the second matter.

19 MR. OSWALD: That's fine.

20 THE COURT: We're going to stay on the first matter
21 right now and then you can --

22 MR. OSWALD: Yep.

23 THE COURT: -- give your name then.

24 Okay. Very good. I've got an agenda right here. Can
25 you tell me what we've got going, Ms. Schultz?

1 MS. SCHULTZ: Yes, Your Honor. Good morning. Again,
2 for the record, Sarah Schultz on behalf of the liquidating
3 trust.

4 Your Honor, the first item on the agenda is a resolved
5 matter.

6 THE COURT: Okay.

7 MS. SCHULTZ: At long last, I'm pleased to report that
8 we have resolved the final claim on the thirty-first omnibus
9 objection, which was Claim No. 4608, Julian Sosner. That claim
10 has already been listed on a filed notice of resolvable claims.

11 THE COURT: Okay. Let me catch up with you. Okay.
12 I'm looking at -- I have -- oh. I'm sorry. You did both
13 sides. I'm -- okay. I'm with you.

14 MS. SCHULTZ: Sorry.

15 THE COURT: Okay. That's all right. I was just --
16 okay. Tell me again. The thirty-first objection, omnibus
17 objection?

18 MS. SCHULTZ: Yes, Your Honor. I'm pleased to report
19 that Claim No. 4608 of claimant Julian Sosner has been
20 resolved.

21 THE COURT: Okay.

22 MS. SCHULTZ: We've included it on an already filed
23 notice of resolved claims.

24 THE COURT: Okay. So that one is -- does that mean
25 thirty-one -- the thirty-first omnibus objection is complete?

1 MS. SCHULTZ: It does, Your Honor.

2 THE COURT: Excellent. Okay. The fifty-fourth?

3 MS. SCHULTZ: The next matter on the agenda, Your
4 Honor, is adjourned. The fifty-fourth omnibus objection, we
5 have two exhibits to this notice of adjournment. The first is
6 Exhibit A, and those are the fifty-two employee claims that
7 we've been talking about, that we're still in the process of
8 resolving.

9 THE COURT: Okay.

10 MS. SCHULTZ: Those are being adjourned to October
11 10th at 5 p.m. -- that's the objection deadline, I'm sorry.

12 THE COURT: Yeah, that's --

13 MS. SCHULTZ: That's being adjourned.

14 And then the second relates to sort of the other
15 general claims that are on that exhibit. And I'm pleased to
16 report to Your Honor there are eighteen claims left.

17 THE COURT: Okay.

18 MS. SCHULTZ: These are the claims that were filed in
19 liquidated amounts that we're still working through. And I
20 actually think yesterday we resolved another one of them.

21 THE COURT: So we're possibly down to seventeen?

22 MS. SCHULTZ: Potentially down to seventeen, Your
23 Honor, yes.

24 THE COURT: And when is that adjourned to?

25 MS. SCHULTZ: That is adjourned to November 14th.

1 THE COURT: 14th. Okay.

2 MS. SCHULTZ: Uh-huh.

3 THE COURT: I've got that correct then. I'm in the
4 same place you are. Okay.

5 MS. SCHULTZ: Okay. Your Honor, the next matter on
6 the agenda is a status conference with respect to one of the
7 preference actions; and for that, I'll yield the podium to Mr.
8 Smith.

9 THE COURT: Which is Adversary Proceeding No. 12-
10 01418, the Tact Medical Staffing?

11 MS. SCHULTZ: Yes, Your Honor.

12 THE COURT: Yes, Mr. Smith. Yes, sir. State your
13 name again for the record. Mister --

14 MR. SMITH: Oh, I'm sorry. Yes, Your Honor. David
15 Smith of Togut, Segal & Segal, counsel to the liquidating
16 trust.

17 MR. GREENWALD: Good morning, Your Honor. Wayne
18 Greenwald of Wayne Greenwald, PC, attorneys for Tact Medical.

19 THE COURT: Okay.

20 MR. SMITH: Your Honor, this is, for the record,
21 again, our last adversary proceeding that remains open, and it
22 has remained the only adversary proceeding that has not
23 settled, defaulted, or resolved -- or otherwise resolved, for
24 approximately seventy days now.

25 Your Honor, a brief history. In April, we filed our

1 250 actions, and again, all of them are now resolved with the
2 exception of this one.

3 In January, on January 18th, we issued a series of
4 discovery demands to multiple defendants, including Tact, who,
5 for lack of a better explanation, just we couldn't quite get
6 very far with, and we wanted to get some traction. So we
7 issued discovery demands, as well as notices of a deposition,
8 pursuant to Bankruptcy Rule 7030(b)(6).

9 THE COURT: Okay.

10 MR. SMITH: Your Honor, as of -- and I'll get this to
11 you in a second -- we still have not received responses to
12 these discovery demands. As the --

13 THE COURT: Do we have a scheduling order in this?

14 MR. SMITH: We do, Your Honor. And we had a
15 scheduling order for approximately five -- or for -- excuse me,
16 for four defendants, and all of the other three defendants
17 quickly resolved. Yet, we have not resolved this one.

18 I will note for the record that, among other things,
19 the scheduling order held that, by August 30th, responses to
20 discovery demands were to be -- the responses, either in the
21 form of document requests or objections, were supposed to be
22 delivered to our offices. As of this morning, we have not
23 received anything. We also have not received a deponent for
24 our 30(b)(6) deposition.

25 At the status conference on July 18th, Mr. Greenwald

1 sat here and specifically noted to the Court that he would
2 comply with the scheduling order. Again, on August 15th, Mr.
3 Greenwald again informed the Court that he would designate a
4 deponent and would comply. Needless to say, I don't want to
5 sound too repetitive, but we have nothing.

6 THE COURT: Mr. Greenwald?

7 MR. GREENWALD: Yes, Your Honor. Number one, there
8 has been some compliance with the scheduling order. I have
9 provided some documents to the plaintiff.

10 THE COURT: What have you -- how many, and what are
11 they?

12 MR. GREENWALD: Have -- was only able to provide one
13 document, which is a billing and payment --

14 THE COURT: So "some" is one.

15 MR. GREENWALD: Yes.

16 (Laughter via telephone.)

17 MR. GREENWALD: Thank you.

18 It was a billing and payment history between the
19 debtor and the defendant.

20 I had been asking for documents, and I was told that,
21 as a result of Sandy, most -- a lot of documents have been
22 destroyed, but I've still been pressing for the documents.

23 THE COURT: Motion to compel, Mr. Smith.

24 MR. SMITH: Yeah, I --

25 THE COURT: Let's get them in here.

1 MR. SMITH: We will file a motion to compel shortly.

2 MR. GREENWALD: Actually, Your Honor, if I can save
3 time?

4 THE COURT: Sure.

5 MR. GREENWALD: Regardless, I will have a -- today is
6 Thursday. I'll have a response in by Monday, regardless --

7 THE COURT: We've heard.

8 MR. GREENWALD: No, I'm -- if it's not in by Monday,
9 fine. I was just -- I'm looking to --

10 THE COURT: If it's not in by Monday, noon. I will
11 give you a break on not working on this until Monday, noon.

12 MR. GREENWALD: Fine. Thank you, Your Honor.

13 THE COURT: If it's not in by Monday, noon, file your
14 motion to compel.

15 MR. SMITH: Thank you.

16 THE COURT: We're here, back here again, on October
17 14th?

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: All right.

20 MR. GREENWALD: Thank you. Your Honor, as I said --

21 THE COURT: Mr. Greenwald, you need to alert your
22 clients, if I have to rule on a motion to compel, they will
23 start paying for it.

24 MR. GREENWALD: I understand that, Your Honor. And I
25 will go as far as saying I had a very useful conversation with

1 Mr. Oswald this morning, who had suggested maybe even having
2 the client -- if we're not able to settle it, to have the
3 client in court.

4 THE COURT: Good idea. I will order the client in
5 court. The person that you're going to designate as the
6 7030(b)(6).

7 MR. GREENWALD: Right. And I have already designated
8 him. We're -- at this point, we were discussing a deposition
9 date. My client would be available whatever date the trustee -
10 -

11 THE COURT: Before October 14th, because I want --

12 MR. GREENWALD: Fine.

13 THE COURT: When I appear on October the 14th in this
14 courtroom, I want to know that all of the documents have been
15 turned over and that deposition has been held.

16 MR. GREENWALD: Fine. Your Honor, two other points,
17 just so --

18 THE COURT: Okay.

19 MR. GREENWALD: I had been also focusing on trying to
20 get this thing settled.

21 THE COURT: Okay.

22 MR. GREENWALD: And I should be had -- and I've been
23 promised a settlement offer by tomorrow.

24 THE COURT: By the -- your clients?

25 MR. GREENWALD: By my client, yes, by tomorrow.

1 THE COURT: Tell them they're going to start paying
2 anyway --

3 MR. GREENWALD: Understood.

4 THE COURT: -- if they're not careful.

5 MR. GREENWALD: Understood.

6 Also, I had received objections to our document
7 request, and there was not a single document provided, even --
8 what I'm told, the documents are supposedly available. I will
9 continue to try and resolve this one --

10 THE COURT: Mr. Smith?

11 MR. SMITH: Your Honor, yes. There were four document
12 requests we received. We submitted our objections because we
13 viewed them as overly broad. There was no specific time frame
14 set forth. And we specific -- I specifically informed Mr.
15 Greenwald that, if he explains to me a reasonable time frame
16 and a reasonable explanation of the documents, to the extent
17 that they are in our immediate possession, we will produce
18 them. And that's --

19 THE COURT: What kind of time frame do you want?

20 MR. GREENWALD: I had originally suggested, during the
21 relations -- the relationship between the debtor and the
22 defendant, because we're looking to establish what was the
23 ordinary course of business, if we would agree to the ordinary
24 course of business as three years, or the means of determining
25 what the ordinary course of business is, is three years, I'm

1 fine with three years.

2 THE COURT: Mr. Smith, any --

3 MR. SMITH: No, that's acceptable.

4 THE COURT: Do it. Three years.

5 MR. GREENWALD: Thank you.

6 THE COURT: Get it to them -- get it to them --

7 MR. GREENWALD: Actually -- uh-huh.

8 MR. SMITH: What we will produce is anything we have
9 in that time frame.

10 THE COURT: Okay.

11 MR. SMITH: Obviously, to the extent that the
12 documents should be in the defendant's control, that would be
13 our response. If they're simply unavailable, we would need to
14 know why, and we'd need to -- we need to actually know what it
15 is specifically --

16 THE COURT: With good heads. If you got them, give
17 them to him --

18 MR. GREENWALD: Right.

19 THE COURT: -- if you don't --

20 MR. SMITH: Exactly, Your Honor.

21 THE COURT: -- put an affidavit in that you don't have
22 them.

23 MR. GREENWALD: Thank you. And if they're in --

24 MR. SMITH: Thank you, Your Honor.

25 THE COURT: That's what I want.

1 MR. GREENWALD: If they're in our control, we're still
2 entitled to know what you have.

3 THE COURT: Exactly. They're still entitled to know.

4 MR. SMITH: Absolutely.

5 THE COURT: You find them, you give them.

6 MR. SMITH: Absolutely, Your Honor.

7 THE COURT: Okay.

8 MR. GREENWALD: Thank you very much, Your Honor.

9 THE COURT: And I'd like you to do that by next
10 Wednesday.

11 MR. SMITH: Yes, Your Honor.

12 THE COURT: And --

13 MR. GREENWALD: Your Honor, as far as I'm concerned,
14 he can do it by Friday. But I would -- I would not be making a
15 motion to compel.

16 THE COURT: Get it done.

17 MR. GREENWALD: Absolutely.

18 MR. SMITH: Thank you, Your Honor.

19 MR. GREENWALD: That's the goal.

20 THE COURT: All right. Thank you. And check with --

21 MR. GREENWALD: And if -- and if we're not settled on
22 the 14th, my client will be here.

23 THE COURT: Absolutely.

24 MR. GREENWALD: Thank you.

25 THE COURT: By order of this Court.

1 MR. GREENWALD: Yep.

2 THE COURT: Thank you.

3 MR. GREENWALD: Thank you again.

4 THE COURT: Ms. Schultz, on the contested matters.

5 MS. SCHULTZ: Yes, Your Honor. The next matter on the
6 agenda is for three contested matters that I think would group
7 together. They include Ms. Menkes' motion for reconsideration
8 of Your Honor's order from our last hearing, her request for an
9 order to stay the order that you issued, and there's also --

10 THE COURT: Okay. These are all on Ms. Menkes.

11 MS. SCHULTZ: Yes.

12 THE COURT: Ms. Menkes, come forward.

13 MS. MENKES: Yes, Your Honor.

14 THE COURT: State your name and affiliation.

15 MS. MENKES: Yes, Your Honor. Sheryl R. Menkes, M-e-
16 n-k-e-s.

17 THE COURT: Menkes. I'm sorry. I'm mispronouncing.

18 MS. MENKES: That's all right. Attorney for --
19 everyone does. Attorney for creditor Elaine Garvey, as
20 Administratrix of the Estate of Ronald Brophy, Deceased.

21 THE COURT: Okay.

22 MS. MENKES: And do you have a preference of which
23 motion I start with?

24 THE COURT: Let me -- I'll tell you what preference --
25 the way I have them. I have a reconsideration letter, I have

1 the billing statement, and then I have a stay. That's the
2 order I have them in.

3 MS. MENKES: I have submitted --

4 THE COURT: It's called -- I think you did a letter.

5 MS. MENKES: I also submitted formal papers, which the
6 trustee responded to.

7 THE COURT: Okay.

8 MS. MENKES: At any rate, the point of my --

9 THE COURT: Do we have them?

10 MS. MENKES: They were downloaded -- uploaded.

11 Whichever.

12 MS. SCHULTZ: Your Honor, I think the papers that
13 she's referring to are here on the agenda as her reply.

14 THE COURT: Well, tell me what tab I'm in.

15 MS. SCHULTZ: Yeah. It should --

16 MS. MENKES: Document 3685, I have as --

17 THE COURT: On the docket?

18 MS. SCHULTZ: Uh-huh.

19 THE COURT: 3685?

20 MS. MENKES: I believe so.

21 THE COURT: What tab is it?

22 MS. SCHULTZ: I believe it's Tab 12 in your binder,

23 Your Honor.

24 THE COURT: Thank you. Let me get there.

25 MS. SCHULTZ: I know. It's a big binder, that's why

1 we double-sided it.

2 THE COURT: That's fine. Okay. That's the -- that's
3 your affidavit, Ms. Menkes.

4 MS. MENKES: Yes, and that was the motion that the
5 trustee opposed my reply to, so -- and then I --

6 THE COURT: Okay. Let me just be clear. Let me find
7 out where I am --

8 MS. MENKES: Sure.

9 THE COURT: -- so I know. What I have -- would you
10 put it over there on that ELMO, so I -- Ms. Menkes? Ms.
11 Menkes, what you have, put it on the ELMO, so I know we're
12 looking at the same thing.

13 MS. MENKES: Okay. I have that motion --

14 THE COURT: What I have is an affidavit from you.

15 MS. MENKES: Yeah, I -- I labeled it affidavit and --

16 THE COURT: Okay. So that's not a motion; that's an
17 affidavit.

18 MS. MENKES: Okay. Well, the trustee responded,
19 really, opposing --

20 THE COURT: I understand the trustee responded to you.
21 But you filed a letter and then an affidavit.

22 MS. MENKES: Okay.

23 THE COURT: You did not file a motion. Am I correct?

24 MS. MENKES: It wasn't labeled as a motion, Your
25 Honor, that's correct.

1 THE COURT: Okay. All right.

2 MS. MENKES: So the point of the affidavit -- and then
3 I did an addendum to that, as well.

4 THE COURT: Is that Number C, Ms. Schultz? What do we
5 have?

6 MS. MENKES: That's Docket 3688, Document -- that's
7 the addendum, 3688.

8 THE COURT: 3688 came before 3707?

9 MS. MENKES: No. The first one is 3685, and then
10 3688, which is the, quote/unquote, "reconsideration."

11 THE COURT: Okay. I'm trying hard, but I have your
12 affidavit as Document No. 3707.

13 MS. SCHULTZ: Yes, that's -- that is correct.

14 THE COURT: That's exactly what it says on it.

15 MS. MENKES: I have the number wrong?

16 (Participants confer.)

17 MS. MENKES: Then I'm sorry. Then I was given a wrong
18 number.

19 THE COURT: This is what came back to you. Okay.

20 MS. MENKES: Yeah, my assistant --

21 THE COURT: All right.

22 MS. MENKES: -- labeled it incorrectly.

23 THE COURT: Okay.

24 MS. MENKES: The point of the affidavit is that, when
25 we were here last time, as you know, the trustee was awarded

1 motion costs as sanctions for me filing in state court.

2 THE COURT: Right.

3 MS. MENKES: And I did want to bring to the Court's
4 attention that, when I filed this action in state court, it was
5 in no way to disrespect this court or the bankruptcy
6 proceedings. I had researched before I filed in state court,
7 and I have the cases that I researched laid out in my papers.

8 And Chevron Oil Company v. Dobie, it's a New York
9 Court of Appeals Case, 1976. And it says that the state court
10 has concurrent jurisdiction with the Bankruptcy Court in
11 determining the effect of a bankruptcy discharge, with the
12 exception of fraud.

13 Another case I had researched is Minafri v. United
14 Artists Theaters, Inc. The citations are in the paper.

15 THE COURT: Yes, I have those, right.

16 MS. MENKES: Okay. The plaintiff's tort claim against
17 the corporate defendant was not precluded by plaintiff's
18 failure to file the notice of claim in defendant's bankruptcy
19 proceedings.

20 Adriani v. Seamus (phonetic). Plaintiff may continue
21 med-mal against defendant after defendant's discharge in
22 bankruptcy, as long as recovery is limited to insurance.

23 1440 Richmond Realty Corp. v. Four Bridges --

24 THE COURT: Okay. Let's stop there for just a second.

25 MS. MENKES: Okay. I -- yes.

1 THE COURT: I want to ask you some questions.

2 MS. MENKES: Okay, Your Honor.

3 THE COURT: You -- it seems to me you're trying to
4 reargue this motion --

5 MS. MENKES: Well, I didn't --

6 THE COURT: -- in a way that you haven't met the
7 standards under, I guess basically -- are we looking at a 60(b)
8 to reargue the motion? And that standard is not what you're
9 doing.

10 MS. MENKES: Well, I wasn't given the opportunity to
11 argue jurisdiction last time. But I did want to explain why I
12 filed in state court; that it was not a wilful disregard of
13 this Court.

14 THE COURT: You said that last time. You said that
15 last time. I heard you, and I heard you clearly.

16 MS. MENKES: I also wanted to state that, in the
17 trustee's opposition to this, that they said that -- I mean, I
18 -- first of all, I misapprehended that there was no insurance.
19 But that's not the real issue here. I mean, if I had not
20 apprehended that there was no insurance, I would not have made
21 this order to show cause, the crux of which was to go after the
22 insurance. And as a solo practitioner, I have to be very
23 careful of how I spend my time. So, apparently, I
24 misapprehended that. That was a mistake on my part, but it was
25 not a wilful disregard.

1 THE COURT: Okay. Again, I'm listening to you.

2 MS. MENKES: And then I also want to go on to add that
3 I was in a position, where I had to maintain my client's
4 statute of limitations, which brings up an ethical obligation I
5 have to my client. If -- I did have discussions with her about
6 discontinuing her case, they went back and forth, back and
7 forth. But I have an ethical obligation to represent her, and
8 it would be malpractice for me to withdraw her state court
9 action unless -- well, that goes on to my motion for a stay
10 pending the appeal.

11 I also want to add, in terms of this motion, that the
12 costs that -- if we get down to that, that the trustee is
13 looking for, for the motion -- for one motion in state court
14 and one appearance, \$83,000, in my opinion, is vastly
15 excessive, and it's an amount that neither my client, nor I are
16 able to pay. And I did put in my papers, if you'd like to
17 review my tax returns in camera, I'll be very happy to provide
18 that to you.

19 But I really believe that, since I did not go into
20 state court in defiance, that I had a good-faith basis to do
21 that, and the case law I researched indicated that that was an
22 appropriate forum; that I really shouldn't be sanctioned for
23 adhering to case law that I had researched prior to initiating
24 the action.

25 THE COURT: Okay. I have heard you.

1 MS. MENKES: Okay, Your Honor.

2 MS. SCHULTZ: Thank you, Your Honor. For the record,
3 Sarah Schultz, Akin, Gump, Strauss, Hauer & Feld, on behalf of
4 the liquidating trustee. Your Honor, I'll be brief.

5 THE COURT: Okay.

6 MS. SCHULTZ: I know you've read the various pleadings
7 that are before you, you've heard everything that was said last
8 month, and I know you've reflected on the facts, so I'm not
9 going to go into any detail there. But there are a few points
10 with respect to the motion for reconsideration, my affidavit
11 that was submitted in connection with the fees, as well as the
12 request for the stay pending appeal, pending the resolution of
13 the applicable appeal, that I think need to be addressed.

14 First, although we're not really sure from the papers
15 if she's moving under 59(e) or 60(b) --

16 THE COURT: Right.

17 MS. SCHULTZ: -- I don't think she's met her burden.
18 We haven't heard anything today that would establish that the
19 movant has met this heavy burden.

20 Courts in this jurisdiction and others have made clear
21 that the standard for reconsideration is narrowly construed,
22 strictly applied to discourage litigants from making repetitive
23 arguments on issues that have been thoroughly considered by the
24 Court.

25 It's also difficult for us to discern exactly what the

1 movant is seeking reconsideration of. But we think, based on
2 her papers, that it's the award of sanctions, not Your Honor's
3 actual order. To the extent --

4 THE COURT: Right.

5 MS. SCHULTZ: -- that it's the actual order with
6 respect to notice, we would note that that issue is already on
7 appeal.

8 THE COURT: Right.

9 MS. SCHULTZ: And therefore, I'm not going to reargue
10 that. I would just state that we stand on the oral arguments
11 that we presented last month, as well as our papers presented
12 last month. With --

13 THE COURT: I can tell you that what I see, it seems
14 to be the reconsideration is solely with the issue of fees.

15 MS. SCHULTZ: I think so, and I'd like to address
16 that.

17 THE COURT: Okay.

18 MS. SCHULTZ: With respect to sanctions, in support of
19 a reconsideration motion, she seems to rely on two points:

20 One, she says that she doesn't know -- did not know at
21 the time she filed the show cause order that there was no
22 insurance available; and therefore, her pursuit of the show
23 cause order in state court was not -- was appropriate.

24 And two, she seems to say that the Court failed to
25 consider the question of concurrent jurisdiction between the

1 Bankruptcy Court and the state court. And this is found in
2 Paragraph 4 of her reply affidavit at Docket 3707.

3 First, with her respect -- with respect to her
4 assertion that she didn't know there wasn't any insurance
5 available, Your Honor, the record before the Court just doesn't
6 support that. To the contrary, the evidence that we submitted
7 at the original hearing establishes that we went to great
8 lengths to ensure that she knew and was aware that there was no
9 insurance available.

10 In informed her personally on the phone, in a
11 conversation that, frankly, as I reread the transcript last
12 night, she admitted that she received that information via
13 phone. She said, I was given no supporting document, I was
14 just given a -- somebody told me something on the phone. This
15 is as you're questioning her as to why she proceeded when she
16 knew there was no insurance. That's the transcript at Page 46,
17 Line 18.

18 But we also informed her via email on no less than
19 three occasions. These are emails that she replied to. So
20 Your Honor, we're hard-pressed to believe that she didn't read
21 them. I assume that she read them, and she responded to them.
22 In each of these emails, we told her there's no insurance
23 available.

24 If she or her client, as Ms. Menkes seemed to assert
25 at the last hearing, required additional information from the

1 trustee, or documents to confirm that there was, indeed, no
2 insurance, she needed only ask. We were working with her in
3 cooperation to provide her all the information that we had.
4 She didn't ask. Instead, she went to state court and sought a
5 show cause order as to why we -- the liquidating trustee should
6 be compelled to lift the stay.

7 She seems to admit in her reply that she actually
8 failed to read the advance courtesy copy of the motion that was
9 before Your Honor last week, to enforce -- or last month, to
10 enforce the plan injunction, alleging that:

11 "The liquidating trustee flooded creditor's attorney
12 with paperwork, and attorney" -- "and creditor's
13 attorney failed to comprehend that there was
14 documentary evidence to support the liquidating
15 trustee's allegations that there was no insurance
16 available."

17 Your Honor, assuming it's correct and she failed to
18 either read the motion or the exhibits or both, frankly, I
19 can't do anything about that. There's nothing I can do,
20 there's nothing the liquidating trustee can do, other than
21 provide her the information to try to prevent her from doing
22 something that we know is incorrect.

23 The party that should -- the parties that should not
24 be damaged by this, however, are the creditors of this estate.
25 They shouldn't be forced to bear the financial burden of

1 defending a show cause order in state court, and what we
2 believe, frankly, was an unnecessary motion to enforce the stay
3 before Your Honor because Ms. Menkes failed to read the
4 documents provided to her via email and via mail.

5 Second, with respect to the movant's assertion that
6 she was not given an opportunity to raise her argument
7 regarding concurrent jurisdiction, again, we don't believe the
8 record supports this. She clearly had the opportunity to raise
9 this issue in her response to the liquidating trustee's motion.
10 She's asserted to us at various times that she thoroughly
11 researched this issue before she went into state court. So
12 even if she felt crunched for time in responding to our motion,
13 it seems like this is research that should have been readily
14 available, and she could have put in her written response.

15 Similarly, she clearly had the opportunity to raise
16 this at the hearing. At what point Your Honor said to her:

17 "Why did you do a show cause order in state court
18 instead of coming to this Court? What was your purpose in
19 doing this?"

20 That's the transcript at Page 46, Line 11. She
21 clearly had the opportunity at that point to raise the issue
22 that she believed that concurrent jurisdiction existed.

23 Further, in Your Honor's ruling, you acknowledged that
24 there was the possibility of concurrent jurisdiction in certain
25 cases, but then you stated that such concurrent jurisdiction in

1 this case doesn't apply. So it's clear that Your Honor did
2 consider that issue -- that question, and determined that it
3 didn't apply.

4 Finally, Ms. Menkes asserts in her reply that the
5 liquidating trustee erred by failing to address concurrent
6 jurisdiction, cases that she cited this Court to, and instead
7 focusing on her knowledge that there was no insurance
8 available.

9 First, we don't believe her cases are on point. Each
10 of these cases refers to a situation where the state court was
11 asked to determine the impact or the applicability of a plan
12 injunction and/or a discharge, and did it apply. That's not
13 our case. In this case, Ms. Menkes sought and received a show
14 cause order from a state court as to why -- and I quote:

15 "-- an order should be entered compelling the
16 liquidating trustee to lift the stay on the
17 plaintiff's personal jurisdiction" -- "personal injury
18 claim on a state court action."

19 Your Honor, the only court I'm aware of who has the
20 power to lift a stay with respect to this debtor is you.

21 Second, the question as to whether insurance is
22 available to cover the alleged claim is clearly relevant, and
23 in fact, central to any analysis regarding concurrent
24 jurisdiction. If there's no insurance, there are no non-estate
25 resources for Ms. Menkes claim to recover against; and

1 accordingly, no possibility of concurrent jurisdiction. If
2 insurance had existed, I think we'd be having a different
3 discussion, but that's not our case, Your Honor.

4 Your Honor, unless you have any questions of the
5 liquidating trustee with respect the reconsideration motion --

6 THE COURT: I don't --

7 MS. SCHULTZ: -- I'll move on.

8 THE COURT: I do not.

9 Ms. Menkes, do you want to rebut?

10 MS. MENKES: Yes, I do, Your Honor. If you read the
11 cases that I supplied, they clearly indicate that the state
12 court has the power to make a determination on the bankruptcy
13 stay, from the Court of Appeals on down.

14 THE COURT: Miss -- you do not have to address that.

15 MS. MENKES: Okay. I do not -- I reread the
16 transcript myself.

17 THE COURT: Had the stay been lifted in those cases?

18 MS. MENKES: Yeah, in some of them.

19 THE COURT: The stay had been lifted.

20 MS. MENKES: In some of them, it was felt, even after
21 the confirmation plan, that -- that the creditor could proceed.
22 So that's essentially lifting the stay. In terms of my
23 preparation --

24 THE COURT: I'm not sure you understand my question.
25 Had the Bankruptcy Court lifted the stay for those cases to

1 proceed?

2 MS. MENKES: No, I don't believe so. In my reading of
3 the cases, that was not in any of the cases. They were all
4 state court cases --

5 THE COURT: I think you're --

6 MS. MENKES: -- which is what --

7 THE COURT: I think you may be wrong on your cases.

8 MS. MENKES: I -- that's why I brought this in state
9 court.

10 THE COURT: Okay.

11 MS. MENKES: In terms of misapprehension of the
12 insurance, no insurance, I did not receive the declarations
13 until right before the prior motion was heard. In terms of
14 being prepared for that motion, I had asked the trustee to give
15 me a brief adjournment. It was a very fast return date;
16 thirteen days. I had asked the Court for an adjournment, it
17 was all denied. I did the best I could in the four days I had
18 to address the motion, not being a regular practitioner in
19 Bankruptcy Court.

20 In terms of not taking the trustee's word for the fact
21 that there was no insurance, it's adversarial -- it's
22 adversarial --

23 THE COURT: You were served earlier than four days, I
24 believe.

25 MS. MENKES: Not with the declarations. I don't think

1 I was served with the declarations until right before I had to
2 come -- come in here.

3 THE COURT: Okay. One of the things you're not doing
4 -- I think we addressed most all of this before. But one of
5 the things you're not doing is addressing the standard for
6 reconsideration. And it is a very --

7 MS. MENKES: Okay.

8 THE COURT: -- heavy burden.

9 MS. MENKES: Well --

10 THE COURT: You already argued why you went to state
11 court in the prior hearing. You already argued to me about
12 your time frame in the prior hearing.

13 MS. MENKES: I think --

14 THE COURT: There is a very heavy burden on
15 reconsideration, and I am not hearing that, and there is a
16 standard for that.

17 MS. MENKES: Well, I did not argue concurrent
18 jurisdiction; and when I tried to, I was cut off. So
19 concurrent -- I did not get -- even get to argue concurrent
20 jurisdiction last time. I looked through the transcript, I
21 tried to bring it up, and I was told you -- I already had a
22 chance to argue. So --

23 THE COURT: Was it in your memo?

24 MS. MENKES: I believe it was. I don't recall --

25 THE COURT: I believe --

1 MS. MENKES: I don't recall it -- I don't recall it a
2 hundred percent.

3 THE COURT: Okay.

4 MS. MENKES: But I certainly believe --

5 THE COURT: But you already argued why you went to
6 state court --

7 MS. MENKES: Yeah, and it was --

8 THE COURT: -- so I did hear that.

9 MS. MENKES: -- not wilful disregard. And the fact
10 that I -- that there was no insurance was a mistake on my part;
11 I admit that was a mistake, but that's not a wilful disregard.
12 And it's an unfortunate mistake, but if I had realized that
13 there was no insurance, I -- I certainly -- I may have gone to
14 state court, but I might have made a different motion. It just
15 -- I wouldn't make a motion to let me proceed against the
16 insurance policy if there's no insurance policy to proceed
17 against. That just is -- to knowingly do that is ludicrous and
18 a waste of time and resources that -- I don't have the luxury
19 of a lot of time and resources. And that's -- that's basically
20 what I have to say.

21 The state court cases, many of them, I felt, were
22 analogous to this situation. And if they weren't, I would not
23 have gone to state court. I don't disrespect the Court. I
24 don't willingly disobey the Court. We're extremely
25 conscientious.